

FILED

OCT 20 2000

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE:

Master File No MDL-1300

**PATRIOT AMERICAN HOSPITALITY
SECURITIES LITIGATION,**

This Document Relates To:

All Cases

ORDER NO 1

(Consolidating Cases and Setting Further Conference)

The cases listed on Attachment A are before the undersigned for coordinated pretrial proceedings pursuant to a transfer order by the Judicial Panel on Multidistrict Litigation, 28 USC § 1407.

1. Pretrial Consolidation. The cases listed on Attachment A are, until further order, consolidated for pretrial purposes. This order does not constitute a determination that these actions should be consolidated for trial, nor does it have the effect of making any entity a party to an action in which it has not been joined and served in accordance with the Federal Rules of Civil Procedure.

1 **(a) Master Docket and File.** The clerk will
2 maintain a master docket and case file under the style "IN RE
3 PATRIOT AMERICAN HOSPITALITY SECURITIES LITIGATION," master file
4 number MDL 1300. All orders, pleadings, motions and other
5 documents will, when filed and docketed in the master case file, be
6 deemed filed and docketed in each individual case to the extent
7 applicable.

8 **(b) Captions; Separate Filing.** Orders, pleadings,
9 motions and other documents will bear a caption similar to that of
10 this Order. If generally applicable to all consolidated actions,
11 they shall include in their caption the notation that they relate
12 to "All Actions" and be filed and docketed only in the master file.
13 Documents intended to apply only to "Merger Actions" or "Open Market
14 Actions" will indicate in their caption the case number of the
15 case(s) to which they apply, and extra copies shall be provided to
16 the clerk to facilitate filing and docketing both in the master
17 case file and the specified individual case files. All pleadings
18 shall designate either "Merger Actions" or "Open Market Actions."

19 **(c) Discovery Requests and Responses.** Pursuant to
20 FRCP 5(d), discovery requests and responses will not be filed with
21 the court except when specifically ordered by the court or to the
22 extent offered in connection with a motion.

23 **2. Status Conference.** All parties shall appear for a
24 further conference with the undersigned on Thursday, December 14,
25 2000, at 3:30 pm.

26 **(a) Attendance.** To minimize costs and facilitate a
27 manageable conference, parties are not required to attend the

1 conference, and parties with similar interests are expected to
2 agree to the extent practicable on a single attorney to act on
3 their joint behalf at the conference. A party will not, by
4 designating an attorney to represent its interests at the
5 conference, be precluded from other representation during the
6 litigation; and attendance at the conference will not waive
7 objections to jurisdiction, venue or service.

8 **3. Purposes; Agenda.** The conference will be held for
9 the purposes specified in FRCP 16(a), 16(b), 16(c) and 26(f), and
10 subject to the sanctions prescribed in Rule 16(f). The items
11 listed in Manual for Complex Litigation, Third, sections 21.21 and
12 40.1 shall, to the extent applicable, constitute a tentative
13 agenda. Counsel are encouraged to advise the court as soon as
14 possible of any items that should be added to the agenda.

15 **4. Preparations for Conference.**

16 **(a) Procedures for Complex Litigation.** Counsel are
17 expected to familiarize themselves with the Manual for Complex
18 Litigation, Third, and be prepared at the conference to suggest
19 procedures that will facilitate the just, speedy and inexpensive
20 resolution of this litigation.

21 **(b) Conference of Counsel.** Before the conference,
22 counsel shall confer and seek consensus to the extent possible with
23 respect to items on the agenda, including a proposed discovery plan
24 under Rule 26(f) and a suggested schedule under Rule 16(b) for
25 joinder of parties, amendment of pleadings, consideration of any
26 class action allegations, motions and trial.

1 **(c) Status Reports.** Counsel will submit to the
2 court by December 8, 2000, a brief written statement indicating
3 their preliminary understanding of the facts involved in the
4 litigation and the critical factual and legal issues. These
5 statements will not be filed with the clerk, will not be binding,
6 will not waive claims or defenses and may not be offered in
7 evidence against a party in later proceedings.

8 **(d) List of Affiliated Companies and Counsel.** To
9 assist the court in identifying any problems of recusal or
10 disqualification, counsel's statement will list all companies
11 affiliated with the parties and all counsel associated in the
12 litigation.

13 **(e) List of Pending Motions.** Counsel's statement
14 shall list all pending motions.

15 **(f) List of Related Cases.** Counsel's statement
16 shall list all related cases pending in state or federal court and
17 their current status, to the extent known.

18 **5. Interim Measures.** Until otherwise ordered by the
19 court:

20 **(a) Admission of Counsel.** Attorneys admitted to
21 practice and in good standing in any United States District Court
22 are admitted pro hac vice in this litigation. Association of local
23 cocounsel is not required.

24 **(b) Motions.** Motions directed at the pleadings
25 shall be noticed for hearing on December 14, 2000, at 2:00 pm.

26 **(c) Pending and New Discovery.** Pending the
27 conference, all outstanding disclosure and discovery proceedings
28

1 are stayed and no further discovery shall be initiated. This order
2 does not (1) preclude voluntary informal discovery regarding the
3 identification of relevant documents and witnesses; (2) preclude
4 parties from stipulating to the conduct of a deposition that has
5 already been scheduled; (3) prevent a party from voluntarily making
6 disclosure, responding to an outstanding discovery request under
7 Rule 33, 34 or 36 or (4) authorize a party to suspend its efforts
8 in gathering information needed to respond to a request under Rule
9 33, 34 or 36. Relief from this stay may be granted for good cause
10 shown, such as the ill health of a proposed deponent.

11 **(d) Preservation of Records.** Each party shall
12 preserve all documents and other records containing information
13 potentially relevant to the subject matter of this litigation.
14 Each party shall also preserve any physical evidence or potential
15 evidence and shall not conduct any testing that alters the physical
16 evidence without notifying opposing counsel and, unless counsel
17 stipulate to the test, without obtaining the court's permission to
18 conduct the test. Subject to further order of the court, parties
19 may continue routine erasures of computerized data pursuant to
20 existing programs, but they shall (1) immediately notify opposing
21 counsel about such programs and (2) preserve any printouts of such
22 data. Requests for relief from this directive will receive prompt
23 attention from the court.

24 **6. Later Filed Cases.** This order shall also apply to
25 related cases later filed in, removed to or transferred to this
26 court.

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1 **7. Local Rules; Standing Orders.** Unless otherwise
2 specified in this or subsequent orders, in addition to the Federal
3 Rules of Civil Procedure, the Local Rules of this district and
4 Standing Orders of this court shall govern this litigation.

5 IT IS SO ORDERED.

6 

7
8 VAUGHN R WALKER
United States District Judge

ATTACHMENT A

DORIS JOHNSON v PATRIOT AMERICAN HOSPITALITY	C 99-2153 VRW
IRENE ANSELL v PATRIOT AMERICAN HOSPITALITY	C 99-2239 VRW
GREG GUNDERSON v PATRIOT AMERICAN HOSPITALITY	C 99-3040 VRW
CONSTANTINE SOLA v PAINE WEBBER GROUP, INC.	C 99-3966 VRW
DEBORAH SZEKELY v PATRIOT AMERICAN HOSPITALITY	C 00-0875 VRW
PETER SUSNOW v PATRIOT AMERICAN HOSPITALITY	C 00-0947 VRW
PETER LEVITCH v PATRIOT AMERICAN HOSPITALITY	C 00-0948 VRW
DOROTHY GALLAGHER v PATRIOT AMERICAN HOSPITALITY	C 00-0949 VRW
DAVID MEISENBERG v PATRIOT AMERICAN HOSPITALITY	C 00-1478 VRW

CERTIFICATE OF SERVICE

In re Patriot American Hospitality Securities Litigation. MDL 1300 (VRW)

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 20, 2000, I served a true and correct copy(ies) of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy(ies) into an inter-office delivery receptacle located in the office of the Clerk.

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In re Patriot American Hospitality Securities Litigation.

MDL 1300 (VRW)

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CERTIFICATE OF SERVICE (continued)

In re Patriot American Hospitality Securities Litigation.

MDL 1300 (VRW)

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Richard W. Wicking
CLERK, U.S. DISTRICT COURT

by:



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Deputy Clerk